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SUBJECT: NEW OPT SPECIAL RAPPORTEUR RICHARD FALK

Classified By: Ambassador Warren W. Tichenor, reasons 1.4 (b)(d).

11. (C) Summary: Newly appointed Special Rapporteur for the Occupied Palestinian Territories, Richard Falk, took the Human Rights Council by surprise in his first appearance before the body June 16 by proposing that his mandate be expanded to include violations of international humanitarian law by Palestinians. Falk's proposal had clearly not been previewed either for supporters of the mandate, nor for Israel, the U.S., or any other delegation that opposes it. In a June 18 meeting with Mission officers, Falk admitted he had been unaware of the intense political sensitivities regarding this mandate at the Council, and noted that representatives of Organization of the Islamic Conference (OIC) delegations had told him that reopening the mandate would be impossible for procedural reasons. In fact, the Review, Rationalization and Improvement (RRI) of the OPT mandate, which Israel had hoped would be scheduled for the September 2008 Council session, does not appear on the program of work and will not be conducted at that time. Still, Falk's proposal highlighted not only his unfamiliarity with the highly charged political environment in Geneva, but perhaps also an unexpected independence and approach to his new mandate that may make him a more serious interlocutor on this issue than his predecessor had been. End Summary.

AN UNEXPECTED INITIATIVE...

12. (U) New Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967, Richard Falk, made his debut presentation to the Human Rights Council June 16. Falk, a well-known American professor, has written critically for years about Israel and its alleged violations of human rights and international humanitarian law in the Occupied Palestinian Territories (OPT), going so far as to compare the State of Israel to Nazi Germany. In his Council presentation, Falk unexpectedly argued that the OPT mandate should be expanded in order to undercut those critics of the Council who use the unbalanced nature of Item 7 (the agenda item dedicated to Israel) and the OPT mandate to fuel their condemnation of the whole Council. He also argued that expanding his mandate to include all the participants in the conflict could only highlight the "asymmetry of responsibility" borne by Israel, as the occupying power. Falk also argued that previous reporting had been unbalanced because the mandate only authorized investigation of Israel's violations, not because of any bias by the previous rapporteur, South African John Dugard. Immediately after Falk suggested expanding the mandate to include Palestinian IHL violations, the Israeli Ambassador spoke up in vigorous support of the proposal.

...DRAWS OIC DISAPPROVAL

13. (C) Falk's suggestion drew sharp criticism from the

mandate's ardent supporters, with Egypt and Syria saying that the mandate could not be changed until it could be abolished, at the end of the occupation. The Palestinian DCM in Geneva reported to us privately later that he was fine with the Falk suggestion, but we "had to abide by the mandate." The Israeli DCM told us in turn that Falk had been naive to propose changing the mandate; the proposal had caught the Egyptians and others off-guard, however, which the Israelis considered good news. Israel had already decided not to meet with Falk during his June stay in Geneva, instead waiting to see whether he would prove at all objective before considering a meeting during a future visit.

FALK'S PERSPECTIVE

¶4. (C) We met with Falk June 18 to explore further his suggestion about the mandate's expansion. While clearly highly critical of Israel's actions in the OPT, Falk appeared to be serious and committed to doing a credible job, rather than merely serving as a tool of OIC interests, as John Dugard had been. Falk told us he had been unaware of the intense regional group and bloc politics at the Council, and had been caught off-guard by the negative reaction to his proposal. He said that he was genuinely interested in seeing an improvement of the difficult conditions in which Palestinians (especially in Gaza) live, not in scoring political points. In response to our question as to why he had proposed expanding the mandate to include Palestinian IHL violations, but not Palestinian human rights violations, Falk said that including the latter would get into intra-Palestinian politics, which was a Pandora's box only tangentially related to the mandate itself.

¶5. (C) Falk said that he was consulting as widely as possible, and noted that the Israeli delegation had refused to meet with him, adding that he was genuinely interested in opening up a dialogue with the Israeli government. He also noted, somewhat dryly, that the Israeli ambassador's immediate endorsement of his proposal would surely prove its undoing. Interestingly, Falk told us that he had not been interviewed or otherwise overtly vetted for his nomination to be the Special Rapporteur for the OPT -- the OIC, Arab Group and African Group (of which Egypt is the coordinator in Geneva) appear to have lobbied heavily for his nomination based solely on his writings. (NOTE: This only reinforces the belief, which many others share with us, about the lack of transparency of the process for selecting mandate holders. END NOTE.)

PROCEDURE AND POLITICS

¶6. (C) Predictably, many Council delegations oppose opening up the OPT mandate at all. Their argument is ostensibly on procedural grounds -- Commission on Human Rights resolution 1993/2, which created the mandate, instructed the rapporteur to report "until the end of the Israeli occupation of those territories." The mandate's supporters use the language of 1993/2 to preclude any expansion of the mandate to make it more balanced. In reality, it is widely recognized, the refusal to allow consideration of Falk's proposal is just raw politics in action, as the mandate's supporters have no real interest in seeing this mandate be anything more than a cudgel with which they can batter the Israeli government.

¶7. (C) Although the Israeli Mission recognizes this reality, it sent a letter June 23 to new Council President Martin Uhomoibhi, demanding that the review of the mandate be scheduled for the September Council session. Israel argued that the mandate had been listed on a draft HRC program of work in August 2007 as one of those to undergo the RRI process during the March 2008 Council session. Council secretariat staff have pointed out to us, however, that the OPT mandate was one of several listed on an annex to the program of work which passed by consensus at the December 2007 Council session. The program of work itself passed by consensus, but only after the annex which listed the specific

mandates which would be reviewed was dropped, after vehement lobbying by Egypt, Pakistan and others determined to ensure that the OPT mandate would not be reviewed. Council secretariat staff recently reviewed Webcast footage of the December 2007 session in question and were struck that not one delegation defended including the annex of specific mandates to be reviewed in the program of work that passed by consensus. While the Council's treatment of this mandate is clearly stacked against Israel's interests, on the narrow question of whether the OPT mandate must be subject to RRI review, Israel's effort to force an RRI review this year is clearly doomed to failure.

COMMENT

18. (C) Based on our own meeting with Falk, he gave the impression of being less dogmatic and one-dimensional than his supporters may have expected when they nominated him to this position. While Falk's public record on questions relating to the Israel-Palestinian conflict is well known -- and his 2007 article, "Slouching Towards a Palestinian Holocaust," is downright notorious -- he appears to be more open to objective discussion than his predecessor had been. In his meeting with us, Falk said he was aware that the U.S. vehemently opposed his appointment, yet he was direct and quite frank with us. It may be interesting, going forward, for us to maintain an open line of communication with him, and we believe that were Department officials to meet with him when he visits Washington, they could shape his thinking and encourage a productive working relationship, at least on how he should carry out his still severely skewed mandate.

TICHENOR